

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Development Services

AGENDA DATE: September 27, 2005

CONTACT PERSON/PHONE: Kareem Dallo, P.E., Ext. 4970

DISTRICT(S) AFFECTED: 5

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Vista Del Sol Unit 119 Replat A Subdivision obtain permission from the City Council for a Conditional "B" permit as per Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits, see attached Letter from EP NORTHEAST HILLS I, LTD., owner and developer for Vista Del Sol Unit 119 Replat A Subdivision.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Not for this subdivision

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ DATE: _____

CITY CLERK
SEP 16 10 14 AM '05

Date: September 16, 2005

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:
September 27, 2005.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

Vista Del Sol Unit 119 Replat A Subdivision (District 5)

Special Instructions: DEVELOPMENT SERVICES FOR INFORMATION
CONTACT KAREEM DALLO, P.E. AT 541-4970.

City Clerk's Use

Action Taken: _____ Item No. _____

EP NORTHEAST HILLS I, LTD.

September 15, 2005

Director of Development Services
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Re: Vista Del Sol Unit 119 Replat "A"

Dear Sir:

EP Northeast Hills I, Ltd., the owner and developer of Vista Del Sol Unit 119 Replat "A", is respectfully requesting the approval of conditional "B" building permits for this subdivision.

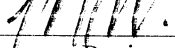
All of the subdivision improvements are completed. Request for street improvement acceptance is being prepared and is expected to be submitted to the City of El Paso in the next week or two. Development agreements for this subdivision are filed with the County Clerk's Office and enclosed with the request.

The need for requesting Conditional "B" Permits is to allow the home builder to fulfill contract obligations for pre-sale contracts signed for this subdivision. Not meeting the delivery dates set on the contracts would constitute a hardship to the homebuilder due to breach of contract.

Please call us should you have any questions.

Respectfully,

EP NORTHEAST HILLS I, LTD.

By: 
Javier Navarro, Project Coordinator

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Enclosure

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 5th day of August 2005, by and between **EP NORTHEAST HILLS I, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **PHILLIPS HOMES OF EL PASO, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **VISTA DEL SOL UNIT ONE HUNDRED NINETEEN REPLAT 'A'** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.
2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
 - (a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
 - (b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
 - (c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.
3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision

improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

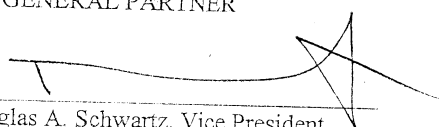
This Agreement is executed to be effective on the date and year first set forth above.


DEVELOPER:

APPLICANT:

EP NORTHEAST HILLS I, LTD.
BY: EP NORTHEAST HILLS, INC.
ITS GENERAL PARTNER

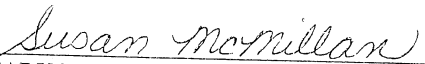
PHILLIPS HOMES OF EL PASO, INC.

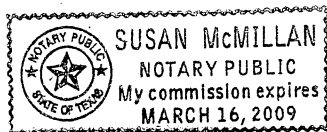
By: 
Douglas A. Schwartz, Vice President

By: 
Bart Phillips, President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

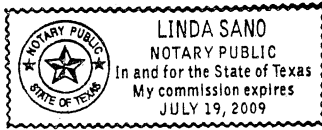
This instrument was acknowledged before me on this 5th day of August, 2005, by DOUGLAS A. SCHWARTZ, Vice President of EP NORTHEAST HILLS, INC. a Texas corporation, on behalf of said corporation.

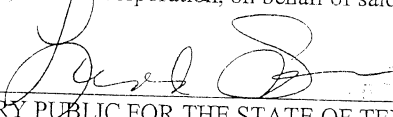

NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 8 day of August 2005, by BART PHILLIPS,
President of PHILLIPS HOMES OF EL PASO, INC., a Texas corporation, on behalf of said corporation.





NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

EP NORTHEAST HILLS II, LTD.
1790 LEE TREVINO, SUITE 601
EL PASO, TEXAS 79936